

**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO. 15-11

IGOR OVCHINNIKOV, IRINA RZAEVA, and DENIS NEKIPELOV,

— vs. —

**MICHAEL HITRINOV a/k/a
MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC., and CARCONT, LTD.**

INFORMAL DOCKET NO.: 1953(I)

KAIRAT NURGAZINOV,

— vs. —

**MICHAEL HITRINOV a/k/a
MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC., and CARCONT, LTD.**

**COMPLAINANTS' RESPONSE TO EXCEPTIONS OF RESPONDENTS' COUNSEL TO
THE PRESIDING OFFICER'S SEPTEMBER 16 DECISION NOT TO
CONSIDER DISCIPLINARY ACTION AGAINST COMPLAINANTS' COUNSEL**

Complainants, through their Counsel, Marcus A. Nussbaum, Esq. hereby respond to the Exceptions of respondents' counsel to the Presiding Officer's Order of September 16, 2016 to not consider disciplinary action against *either* party's counsel.

RELIEF REQUESTED

Respondents have, as a prelude to their instant ill-founded application, and from the inception of this litigation, engaged in an unending wasting of scant judicial resources through having made repeated requests for extensions of time, leave for untimely submissions, extension

of page limits, and other contrived reasons in furtherance of forestalling and delaying timely and expeditious litigation of Complainants' claims herein so as to gain unfair advantage, of which Respondents' instant application is only the most recent example thereof.

Respondents have, in their Exceptions to the Presiding Officer's Order of September 16, 2016 (a copy of which is annexed hereto as Appendix "1"), sought that the Commission "pass" on the issue of whether the Presiding Officer should "issue an appropriate Order" or "recommend a decision", "subject to review by the Commission", for undescribed relief set forth only at the last page of their submission, to wit: for the Commission "...to issue its own Order to Show Cause Why Complainants' Counsel Should Not Be Subject To Disciplinary Action, Rather Than Remand The Matter." In so doing, respondents' counsel has blatantly and willfully disregarded the Order of Judge Guthridge of September 16, 2016 setting forth that such issue can only be decided by the Commission. Accordingly, the arguments of respondents' counsel against a "remand" are moot. Notably, respondents' counsel abjectly *fails* to set forth *any* detailed relief that such "show cause order" should contain.

In sum, though manifestly unclear from respondents' submission, respondents' counsel seeks to disqualify complainants' counsel from practicing law before the Commission, on a *permanent* basis (as evidenced by use of the word "revocation"), by reason of perceived "slights" to respondents' junior counsel; a misperceived "threat" occasioned by reference to a popular song lyric; alleged violations of the Commission's Rules of Practice and Procedure ("RPP") which respondents' counsel by Eric Jeffrey, Esq. ("Mr. Jeffrey") has violated with impunity; and other frivolous bases beneath the dignity of the Commission. As set forth below, Mr. Jeffrey has abjectly *failed* to demonstrate why the draconian relief sought in respondents' Exceptions herein should be granted.

INTRODUCTION

At the outset, while complainants would never disagree that it is indeed a “privilege” to practice law and litigate cases before the Federal Maritime Commission (the “Commission”), and without remotely denigrating all respect, ethical considerations, and adherence to the Code of Professional Responsibility associated with practicing before the Commission, least Mr. Jeffrey obfuscate the legal and administrative requirements for practicing before the Commission, as even Mr. Jeffrey is surely well aware, such requirements consist of being admitted to the bar in any one of the fifty states of this country, and bringing forth claims that meet the requirements and conditions precedent regarding personal and subject matter jurisdiction.

It is further noted that Mr. Jeffrey seeks his instant relief under color of *no* section of the RPP; but rather as is his wont, seeks to create “new” law to satisfy his own personal vendetta against complainants’ counsel, in order to at all costs avoid adjudication of the merits of this case.

Complainants’ counsel did not attend law school and become a member of the bar for the purpose of taking away another attorney’s livelihood. Regrettably, the same apparently cannot be said of respondents’ counsel, Eric Jeffrey, Esq. To that end, while complainants did previously interpose a cross-motion requesting that Mr. Jeffrey be suspended from practice before the Commission for a period of no less than six (6) months, such requested relief is not renewed or sought herein. Rather, complainants’ counsel will rely upon the Commission to *sua sponte* address the many examples of Mr. Jeffrey’s behavior and conduct set forth herein with such remedy as the Commission may deem just and appropriate under the circumstances.

As an Officer of the Court, however, complainants’ counsel has been compelled to cast aside personal beliefs in favor of ‘doing what is right’. Having suffered to endure conduct and behavior on the part of respondents’ counsel, Eric Jeffrey which has progressed from mere

insufferable pomposity and gross uncivility to perjury, fraud, and a demonstration of questionable stability, complainants' counsel is further now compelled to re-engage in the distasteful process of interposing a response to Mr. Jeffrey's personal, and visceral vendetta against the undersigned in its latest and most recent form, to wit: respondents' Exceptions to the Presiding Officer's Order of September 16, 2016.

It is difficult, if not impossible, to characterize the breadth and scope of Mr. Jeffrey's outsized ego as demonstrated by the didactic contexts within which he purports to ply his venom; his disdain and lecturing to the Presiding Officer; and his creation of "the law according to Jeffrey", extending well outside the bounds of this Commission's jurisdiction, or the RPP.

Similarly incalculable, is Mr. Jeffrey's megalomaniacal 'world view' of himself as the guardian of the legal profession, charged with a duty to initiate disciplinary investigation. Succinctly stated, while Mr. Jeffrey sees himself as Hercule Poirot, his instant ill-founded Exceptions are more redolent of Inspector Clouseau.

Rather than burden the Commission with a complete cataloguing of Mr. Jeffrey's own many lies and acts of deceitful practice, complainants' counsel will address the most egregious examples of the utter frivolity of Mr. Jeffrey's purported Exceptions, as well as to expose his own grossly unprofessional and unethical conduct and behavior for appropriate scrutiny by the Commission in considering Mr. Jeffrey's Exceptions.

Complainants' counsel has had growing concerns over Mr. Jeffrey's stability, most recently fueled by his perception of a quotation from a popular song lyric as a perceived "threat" deserving of report to law enforcement (which Mr. Jeffrey has silently but wisely 'walked back' from). Suffice it to say that Mr. Jeffrey's characterization of the foregoing as a "prank" exists *nowhere* but in his own mind.

As to Mr. Jeffrey's continuing association with one Jon Werner, Esq. ("Werner"), who Mr. Jeffrey now openly admits is functioning as "coordinating counsel" in this matter, and who has authored more than one affidavit on behalf of Werner/Jeffrey's mutual client, Hitrinov, it is respectfully submitted that if Werner is to be allowed to continue to file submissions with the Commission under the auspices of counsel for the respondents herein, then he should either be compelled to appear in this matter, *pro hac vice*, or cease further unwanted interference with the orderly litigation and adjudication of this case.

With regard to Mr. Jeffrey's inexplicably compulsive obsession with *pro hac vice* counsel, Mr. Katz; and as has been represented to Mr. Jeffrey on *countless* occasions, despite his delusional inability to comprehend same; *all* pleadings, motions, status reports, filings, correspondence, and indeed *all* writings and materials relating to the litigation of this matter from its inception up to and including the time of this writing have been authored and prepared *solely and exclusively* by Marcus A. Nussbaum, Esq., and *not* by Mr. Katz, who has to date played an extremely limited role in the litigation of this matter, having been retained primarily for purposes of depositions and trial hereon.

BRIEF STATEMENT

The decision of Judge Guthridge, whom "the Great Jeffrey" criticizes for failing to rule in his favor (going so far as to state with breathtaking arrogance that the Commission's Rules of Practice and Procedure are *wrong*, and should be amended to suit Mr. Jeffrey's own vindictive purposes) reads in relevant part, as follows:

The relationship between counsel continued to deteriorate until each filed a motion to disqualify the other. On September 7, 2016, counsel for Respondents filed a Motion of Respondents' Counsel for an Order to Show Cause Why the Commission Should Not Revoke Complainants' Counsel's Privilege of Practicing Before the Commission. The motion cites Commission Rule 26, which states: "An attorney practicing before the Commission is expected to conform to the standards of conduct set forth in the American

Bar Association's Model Rules of Professional Conduct in addition to the specific requirements of this chapter." 46 C.F.R. § 502.26. The motion then sets forth several provisions of the Model Rules allegedly violated by Complainant's counsel. On September 8, 2016, counsel for Complainants filed Complainants' Cross-motion for an Order to Show Cause as to Why the Commission Should Not Suspend Eric Jeffrey, Esq. From Practicing Before the Commission for a Period of Not less than Six Months and as to Why He Should Not Be Personally Removed as Counsel for the Respondents; and Response to Respondents' Motion for an Order to Show Cause Why the Commission Should Not Revoke Complainants' Counsel's Privilege of Practicing Before the Commission. The Cross-motion denies the claims in Respondents' counsel's motion and alleges that counsel for Respondents is unfit to practice law and should be disqualified from practicing before the Commission.

I take official notice, 46 C.F.R. § 502.226, that Complainants' counsel Nussbaum and Respondents' counsel Jeffrey are each involved in other proceedings pending before the Office of Administrative Law Judges or the Commission itself. See, e.g., MAVL Capital Inc., IAM & AL Group Inc., and Maxim Ostrovskiy v. Marine Transport Logistics, Inc. and Dmitry Alper, FMC No. 16-16 (Nussbaum- pending before this administrative law judge); Crocus Investments, LLC and Crocus, FZE v. Marine Transport Logistics, Inc. and Aleksandr Solovyev a/k/a Royal Finance Group Inc. (Crocus v. MTL), FMC No. 15-04 (Nussbaum- pending before the Commission); Baltic Auto Shipping, Inc. v. Michael Hitrinov a/k/a Michael Khitrinov and Empire United Lines Co., Inc., FMC No. 14-16 (Nussbaum- pending before the Commission); Landers Brothers Auto Group, Inc. d/b/a Landers Honda (Jonesboro), et al. v. Nippon Yusen Kabushiki Kaisha, et al., FMC No. 16-11 (Jeffrey- pending before another administrative law judge); Rush Truck Centers of Arizona, Inc., et al. v. Nippon Yusen Kabushiki Kaisha, et al., FMC No. 16-10 (Jeffrey- pending before another administrative law judge); Jill M. Alban, et al. v. Nippon Yusen Kabushiki Kaisha, et al., FMC No. 16-07 (Jeffrey - pending before another administrative law judge); Cargo Agents, Inc., et al. v. Nippon Yusen Kabushiki Kaisha, et al., FMC No. 16-01 (Jeffrey- pending before another administrative law judge). Each may have other matters pending before other offices in the Commission.

Both motions seek disqualification of counsel from appearing before the Commission. By necessity, this would include disqualifying counsel from appearing in matters that are not only before another administrative law judge, but before the Commission itself. These claims should be directed to the Commission, not to an administrative law judge in an individual case. Therefore, I will deny the motions without prejudice to the parties presenting the arguments to the Commission in a more appropriate manner.

Indeed, and despite having been compelled to interpose a cross-motion detailing Mr. Jeffery's own lies, deceitful methods of practice, and numerous gross violations of the RPP, the undersigned very much took 'to heart' Judge Guthridge's well-intended meaning with respect to the amount of cases involving both complainants' and respondents' counsel presently pending

before the Commission. Regrettably, so visceral is Mr. Jeffrey's hate and enmity for the undersigned that same apparently eats away with black acid at his heart causing him to at all costs obtain his "pound of flesh" in order to assuage a badly wounded ego obviously never before challenged in a manner as in the case at bar. It is respectfully submitted that it is the latter that has exclusively fueled Mr. Jeffery's instant Exceptions as opposed to any basis in law or fact.

RECENT PROCEDURAL HISTORY

Having obviously lost confidence in respondents' pending Motion for Judgment on the Pleadings based upon the responses of complainants' counsel, Jeffrey/Werner then shifted ground by fraudulently authoring a series of submissions under the name of non-party Kapustin (whom Werner openly and unethically solicited while simultaneously representing respondent Hitrinov herein in an unrelated matter) in hopes of succeeding where his earlier motion became doomed for failure, in a continuing desperate attempt to at any and all costs avoid litigation of this matter on its merits. Out of an obvious fear that this strategy was also destined for failure, Mr. Jeffrey has now resorted to what can only be characterized as an ultimate act of desperation, to wit: a feckless attempt to have the case dismissed by a specious application completely lacking in substance, and entirely belied by the facts, and prior submissions to the Presiding Officer. Stated otherwise, having realized his inability to either having the case dismissed on the pleadings, and accompanying failure to have complainants' counsel "disqualified" through having authored fraudulent submissions under the name of non-party, Kapustin, Jeffrey/Werner now seeks the only other avenue available to respondents to avoid losing an otherwise indefensible case, to wit: the outrageous, preposterous, absurd, ridiculous, and totally unsupported application now made before the Commission, and in doing so, totally abusing the litigation process, and wholly abdicating their responsibilities as an Officers of the Court.

To the extent that as set forth above and below that any alleged Exceptions to the Presiding Officer's Order of September 16, 2016 are completely *lacking* in substance and support, and are made solely in a "bad faith" and last-ditch effort to avoid litigating this case on its merits and to "punish" complainants' counsel for non-existent acts, it is respectfully submitted that the filing of such abhorrent and legally bereft Exceptions should be summarily denied in its entirety, with prejudice.

ARGUMENT

Mr. Jeffrey's Unclean Hands

It is respectfully submitted that Mr. Jeffery has submitted respondents' purported Exceptions with manifest unclean hands.

Mr. Jeffrey's Numerous Violations of the Commission's Rules of Practice and Procedure

Though deifying himself as the holy keeper and guardian of the RPP as well as being the definer, arbiter, and enforcer of same, it is respectfully submitted that the procedural history of this matter is *replete* with Mr. Jeffrey's many "transgressions" of said RPP, including but not limited to the following: (1) using the pretext of unsolicited and so-called "Status Reports" as a means of wrongfully inserting further argument on motions previously made and presently pending without leave of the Presiding Officer to do so; (2) interposing "sur-replies" to complainants' submissions without leave of the Presiding Officer to do so; (3) using the pretext of "letters" to the Presiding Officer as a means of wrongfully inserting further argument on motions previously made and presently pending without leave of the Presiding Officer to do so; (4) filing submissions and attachments with the Office of the Secretary *different* in form, substance and content from the copies of said papers served upon complainants; (5) abjectly *failing* to serve complainants with submissions filed with the Office of the Secretary "in the manner" that said papers were filed, and

making false representations in a Certification regarding methods of service of same; (6) arbitrarily cutting off communications with complainants' counsel via electronic mail and attempting to improperly use the Office of the Secretary as a "go between" (which was rejected by the Secretary); (7) abjectly *failing* to make any good faith attempt to 'meet and confer' with complainants' counsel (by any reasonable interpretation of the meaning of said phrase) prior to interposing motion practice; (8) on such rare occasions as Mr. Jeffrey engaged in the pretense of conducting a 'meet and confer', complainants were, on at least one occasion given *less than one hour* to respond; (9) engaging in the deceitful practice of "postmarking" a mailing and then deliberately holding same for a period of several days in order to effectively "short serve" complainants with various filings and submissions; (10) improperly requesting the Presiding Officer to "shorten" complainants' time to respond to a submission filed with the Commission from the prescribed time limit set forth in the RPP; (11) unreasonably withholding documents proving ownership of the subject vehicles as a central element to complainants' instant claims, causing complainants to needlessly incur time, expense, and costs associated with making a Motion to Compel same presently pending before the Presiding Officer, and further resulting in complainants having to take the extraordinary measure of requesting a So-Ordered subpoena from the Presiding Officer for which a telephone conference has been held hereon resulting in the further needless wasting of time and resources; and (12) willfully and contumaciously refusing to respond directly to inquiries posed by the Presiding Officer on the issue of subject matter jurisdiction, as well as multiple other transgressions and violations of the very rules Mr. Jeffrey so piously purports to defend, too numerous to discuss in their entirety.

It is against this backdrop, and within this context, that Mr. Jeffrey in an epic example of the psychological phenomenon known as "projection" seeks to tar the undersigned with the very

violative, uncivil, and unethical acts with which Mr. Jeffrey has covered himself, his junior associate, and indeed his firm.

Emblematic of the foregoing is Mr. Jeffrey's disgusting conduct and behavior of having abused an otherwise inviolate excuse of the death of a family member as a reprehensible means of taking advantage of an otherwise personal loss, by claiming inadequate time to respond to prior motion practice while all the time making himself personally available to handle other unrelated matters, which Mr. Jeffrey apparently holds in higher regard than the directives of the Presiding Officer herein for whom Mr. Jeffrey has shown open disdain and contempt.

It is respectfully submitted that the very suggestion that *any* attorney would use a personal loss to gain advantage in *any* litigation is not only outside the bounds of professional civility, but is so distasteful and abhorrent that the undersigned will not comment further on this issue, other than to note that in the midst of said professed time constraints, Mr. Jeffrey apparently had the time to interpose yet another motion in this matter.

Mr. Jeffrey's Unwarranted Personal Attack Against Maria Temkin, Esq.

Complainants' counsel will not dignify by response Mr. Jeffrey's wild-eyed and desperately reckless accusations and characterizations of the aforementioned Ms. Temkin as a "partner in crime", other than to note that if anyone has committed "crimes" in this litigation it is respondent Hitrinov and his counsel through their submission of a fraudulent affirmation bearing a forged signature of Hitrinov, together with Mr. Jeffrey's instant collusion with non-party Kapustin to further defraud the Commission. Complainants' counsel will, however, respectfully rely upon the Commission's discretion as to whether at the close of this litigation a referral to the Office of the United States Attorney with respect to the acts, conduct, and behavior of Kapustin, Mr. Jeffrey, and his client Hitrinov, is appropriate.

With regard to Mr. Jeffrey's bizarre, incomprehensible, and unintelligible ravings as to an alleged divergence of interests between the complainants herein and the parties to the action in which Ms. Temkin is a participant, it is respectfully submitted that the fact that there may be no unity of interest between these parties is of no consequence. It is respectfully submitted that the representations contained in Ms. Temkin's Certification (a copy which is annexed hereto as Appendix "2") which Mr. Jeffrey takes such vehement exception to go directly to non-party Kapustin's utter lack of credibility, and warrants a complete rejection by the Commission of any and all of Mr. Jeffrey's references to Kapustin's submissions.

In yet a further example of ultimate irony, Mr. Jeffrey has attempted to denigrate Ms. Temkin, who attested to her own experience with Kapustin as a liar, cheat and fraud. Such irony is only heightened by Mr. Jeffrey engaging in an epic demonstration of the psychological phenomenon known as "projection", wherein Mr. Jeffrey accuses, and has accused complainants' counsel of numerous wrongdoings, when in fact it is Mr. Jeffrey who has violated the codes of professional conduct by turning himself into a veritable "garbage man", poring through the refuse of each and every attorney who has been an adversary in unrelated matters involving complainants' counsel.

Certification of Maria Temkin

Mr. Jeffrey has incoherently attempted to argue that Ms. Temkin having submitted a Certification on issues emanating from a case also involving respondent Hitrinov have incomprehensibly somehow resulted in the undersigned being "...less interested in representing [the undersigned's] clients' interests than in carrying out a coordinated pincer attack against Empire...". It is difficult, if not impossible to describe the ultimate irony of Mr. Jeffrey's duplicitous position on an alleged coordinated "pincer attack", given his relationship with his

minion, Werner. That said, and apart from bombastic pronouncement, Mr. Jeffrey has abjectly failed to demonstrate how information, material, or evidence which goes directly to respondents' bad faith, motives, and credibility could or would in any way be adverse to the interests of the complainants herein. Certainly, and even taken to its most extreme logical connotation, the foregoing cannot remotely rise to a level of alleged conduct which would warrant the revoking of *any* attorney's ability to practice before the Commission, let alone Mr. Jeffrey's unfounded accusations against the undersigned herein.

As to Mr. Jeffrey's patently absurd suggestion that Ms. Temkin prevailing in her case against Hitrinov would 'leave no money' for the complainants herein, it is respectfully submitted that said contention is so unlawyerly and ridiculous on its face to defy response, other than to note that upon information and belief, respondent, Hitrinov has more money than God.

In sum, Mr. Jeffrey does not know Ms. Temkin (an attorney in good standing within all jurisdictions in which she practices), from a burnt biscuit or a hole in the ground, and has no legal, factual, or moral basis to criticize Ms. Temkin in any shape, form, or manner.

Mr. Jeffrey's Personal Support of a Recognized and Proven Liar, Cheat, Fraud, and "Master Criminal" in the Personage of Non-Party Kapustin

The Hitrinov-Kapustin Connection

In that both respondent Hitrinov and Kapustin have demonstrated themselves to being mentally unbalanced, it should come as no surprise to the Commission that Hitrinov and Kapustin have alternately been allies and adversaries in a game of 'situational ethics' as it has suited their individual pecuniary needs.

Emblematic of the foregoing, is the holding of yet another in the several eminent jurists before whom Hitrinov and Kapustin have appeared in the many litigations that each has been involved in, to wit: the Honorable Judge Sandra L. Townes of the U.S. District Court for the

Eastern District of New York in the matter of Global Auto Inc. et al. v. Michael Hitrinov et al. (U.S.D.C. – E.D.N.Y. Docket No.: 13-cv-2479), wherein the Hon. Judge Townes found that respondents Empire United Lines Co. Inc. and Hitrinov were the “financier” of Kapustin’s fraudulent schemes.

As set forth herein, and upon information and belief, Mr. Jeffrey has not only been the proponent and main protagonist in support of the submissions of non-party Kapustin, but through surmise, conjecture, and speculation has fraudulently attempted to create an alleged “conflict of interest” where one does not otherwise exists.

Specifically, through Mr. Jeffrey having woven a tangled web on behalf of non-party Kapustin whose “cause” Mr. Jeffrey has now openly advocated, one fact has emerged crystal clear, to wit: Mr. Jeffrey is actively furthering Mr. Kapustin’s causes herein (whatever they may be) and has, upon information and belief, authored the filings that Mr. Kapustin, a proven fraud, liar, and “master criminal” avers to have written himself. The latter is particularly troubling in light of coterminous indication that an undated Affidavit proffered by Mr. Jeffrey containing a signature purporting to be that of his client, Mr. Hitrinov, has been found to be *highly probable* of having been forged, by an expert witness retained and exchanged by complainants herein, the ultimate irony of which cannot be overstated.

Transcript of “Proof” Hearing Presided Over By The Honorable Judge Noel L. Hillman in the Matter of Akishev et al v. Kapustin et al. (U.S.D.C. – D.N.J. Docket No.: 1:13-cv-07152-NLH-AMD)

With further regard to non-party Kapustin, the Honorable Judge Noel L. Hillman, an eminent jurist of the U.S. District Court for the District of New Jersey had the following to say about potential “Intervenor”, Kapustin upon whom Mr. Jeffrey has so heavily relied:

“...you are engaging not only in a **fraud** against the plaintiffs in this case, *but a fraud against this Court*, and I have warned you repeatedly, and I am not going to warn you

anymore...you appear to be compelled to continue to offer **false excuses, false statements,** and misrepresentations to this Court **designed to defraud this Court** just as you have defrauded the plaintiffs in this case. I am at wit's end with you. ***In my nine years as a judge, I have never seen someone so willing to lie and cheat and steal than you, and your crimes extend to this Court.***” (See, Transcript of Proof Hearing, dated August 31, 2015, Akishev *et al* v. Kapustin *et al*, at p. 91, a copy of which is annexed hereto as Appendix “3”); (emphasis added).

The Commission is respectfully asked to consider the character and credibility of non-party Kapustin on whom Mr. Jeffery has so heavily relied in considering Mr. Jeffrey’s own credibility with respect to accusations and allegations proffered as the basis for the instant Exceptions at bar.

With further respect to the ongoing collusion between Mr. Jeffery and his minion, Werner in their joint effort to use non-party Kapustin as a “useful idiot” to further Mr. Jeffrey’s personal vendetta against the undersigned, it is undisputed that Kapustin speaks little or no English at all, and that his papers were clearly written by an attorney. Indeed, and in that Mr. Jeffrey has admittedly coordinated with Werner, it is obvious that Werner (who is Respondent, Hitrinov’s counsel in other matters) provided Kapustin (albeit secondhand) with certain of the shipping documents filed herein together with a request that Kapustin “review” said documents. (See, email from Jon Werner to Kapustin of May 27, 2016, annexed hereto as Appendix “4”). It is further significant to note that while Werner (who has not appeared in this matter) purports to have received documents from “Mr. Nussbaum”, the undersigned can affirmatively state that *no* such documents were ever provided by the undersigned to Werner.

To the extent that Mr. Jeffery now has openly averred that Werner is Respondents’ “coordinating litigation counsel”, the Commission should be aware that for quite some time now, Werner is and has been “coordinating” a campaign of personal, *ad hominem* attacks against the undersigned, beginning with Werner having stated to the undersigned as follows: “I don’t know if you are incompetent or just crazy, but either way, I will put you out of business.” It has further

recently come to the undersigned's attention that Werner has contacted all of the undersigned's adversaries on other Federal matters to share information regarding the undersigned's law practice and personal travel abroad.

Kapustin's Waiver of the Attorney-Client Privilege

Annexed hereto as Appendix "5" is a copy of the waiver of the attorney-client privilege executed by Kapustin.

Kapustin's Unbalanced Mental State

Evidence of Kapustin's unbalanced mental state is abundantly provided by the fact that despite his having undisputedly *waived* any attorney-client privilege arising out of complainants' counsel's prior representation of Mr. Kapustin in a submission filed in this matter Kapustin complains that complainants' counsel has "...betray[ed] [the] attorney-client privilege..." the oxymoronic nature of which is self-evident.

As the balance of Kapustin's incoherent motion papers ramble from one issue to another, none of which have any connection with or bear any semblance to the relief sought therein, complainants' counsel will not further burden the Commission with any additional reference to same other than to note Kapustin's admissions as to (1) having waived any attorney-client privilege arising out of the undersigned's prior representation of Kapustin; (2) that he was "...not straightforward all the time with the [C]ourt in other cases..."; and (3) as to the "bitter words" addressed to Kapustin by Judge Hillman of Kapustin being a fraud, liar, cheat, and master criminal.

In sum, Mr. Jeffery has abjectly *failed* both in his original motion, his authoring of non-party Kapustin's motions, as well as in respondents' instant Exceptions to demonstrate any alleged "conflict of interest" arising out of the undersigned's representation of the Complainants herein, purportedly posed by the undersigned having previously represented Kapustin in a separate and

unrelated matter. Further, and to the extent that Kapustin is not a party to the case at bar, and as the potential testimony and information adduced from Kapustin during any ensuing discovery herein would be adverse respondents Hitrinov and Empire United Lines Co. Inc. (and *not* to Kapustin), it is difficult if not impossible to comprehend *how* or in *what* way any conflict of interest is implied.

Despite Mr. Jeffrey's megalomaniacal world view of himself as the arbiter of all law and facts in this matter, one thing remains clear: *at no time* will Mr. Jeffrey be permitted to intrude or insert himself into the attorney-client relationship between complainants' counsel and the complainants herein despite his best, albeit grossly unethical and unsupported attempts to do so.

Uncivility

It is plainly evident that there is no ethical standard which Mr. Jeffrey will not breach; no low to which Mr. Jeffrey will not stoop; no lie that Mr. Jeffrey will not tell; no depth to which Mr. Jeffrey will not sink; and no limit to uncivility that Mr. Jeffrey will not exceed in furtherance of pursuing his distorted, personal, and legally bereft agenda in this litigation.

It is respectfully submitted that in regard to any alleged claims of "uncivility" on the part of complainants' counsel as a proffered basis for revoking complainants' counsels' ability to practice before the Commission, said allegations are made with manifest 'unclean hands' on the part of Mr. Jeffrey directly.

While complainants vehemently disagree with Mr. Jeffrey's characterization of litigation as a "contact sport", the undersigned acknowledges Mr. Jeffrey's admission of having acted "less temperate than his norm", an admission at once galactic in its understatement which further can only leave the reader to wonder as to the state of Mr. Jeffrey's "norm" if his conduct and behavior complained of herein is naught but "less temperate" thereof.

Mr. Jeffrey goes on to purport to subscribe to a belief that "...a modicum of civility and courtesy [should be] preserved, and that the Commission may wish to consider the extreme level of uncivility displayed by complainants' counsel when deciding what to do" with regard to Mr. Jeffrey's Exceptions. It is respectfully submitted that in so propounding, Mr. Jeffrey has been far too modest in describing his own "intemperate" behavior and *gross* lack of civility. Such acts have included but are not limited to the following: calling the undersigned a "liar", and "inveterate liar"; belittling the undersigned's ability to read; querying "who is the biggest liar" referring to the undersigned and respondents' affiant, Kapustin described above by a sitting Federal Court Judge as a "liar", "cheat", "fraud", and a "master criminal"; accusing the undersigned of falsifying documents; accusing the undersigned of lying as to being the *sole* author of all correspondence, filings, and submissions in this matter; repeatedly condescending the undersigned as to "learning the rules", and demeaning the undersigned's understanding of same; accusing the undersigned in papers docketed with the Commission of being a "coward", thus denigrating the undersigned's distinguished military service record; imputing alleged 'criminal intent' regarding a reference to a popular song lyric, and grossly mischaracterizing same as a "prank"; and other uncountable acts of personal rudeness and incivility too numerous to list or mention. It is against this backdrop that Mr. Jeffrey disingenuously asks the Commission to scrutinize alleged conduct and behavior of the undersigned while turning a 'blind eye' to Mr. Jeffrey's own grossly uncivil acts, conduct and behavior.

As to Mr. Jeffrey's purported "arguments" (if they can fairly be characterized as such) complainants' counsel will address same to the extent a response is merited or required.

A prime example of the utter paucity of Mr. Jeffrey's "arguments" is that within which he has seriously suggested that the Commission "revoke complainants' counsel's privilege of

practicing before the Commission” upon ground of alleged misrepresentations concerning personal time taken by complainants’ counsel, and (unbelievably), matters concerning an auto response for complainants’ counsel’s office email. It is difficult if not impossible to comprehend how, and in what way, Mr. Jeffrey (or any stable person or competent attorney) could or would seriously argue in favor of revoking a fellow practitioner’s ability to ply their trade upon such infantile and childish nonsense. To the extent that Mr. Jeffrey has done so, however, the following is proffered in response thereto.

As the Commission may or may not be aware, complainants’ counsel is a sole practitioner. Further, while complainants’ counsel maintains office space, inclusive of an email address appurtenant thereto, complainants’ counsel often works out of his residence. Accordingly, complainants’ counsel utilizes an “auto-response” for ‘after hour’ emails (in which Mr. Jeffrey specializes) in order to advise that emails sent during said time period may not be received or read pending the next business day. As would be obvious to any normal thinking person whose mind is not cluttered with a bitter hatred or instability, the mere fact that said email is on auto-response precludes *neither* the reading of said email, *nor* a response to same by the undersigned. It is again difficult if not impossible to comprehend *how*, or in *what way* the foregoing could *remotely* constitute a basis for the revoking of complainants’ counsel’s ability to practice before the Commission, as punitively and ridiculously propounded by Mr. Jeffrey.

As to Mr. Jeffrey’s fallacious representations concerning personal time off taken by complainants’ counsel, words do not exist to describe the incredible irony of such accusations in light of Mr. Jeffrey’s disgusting practice of having used the death of his father as a pretext for garnering additional time for a submission, which the Presiding Officer in his Order of July 29, 2016 (a copy of which is annexed hereto as Appendix “6”) recognized might indeed constitute an

issue to be addressed before some other tribunal upon disposition of the instant matter. That said, and though Mr. Jeffrey is the last person on earth deserving of *any* explanation of personal time off taken by complainants' counsel, least Mr. Jeffrey's lies be mistaken for truth complainants' counsel responds as follows:

Complainants' counsel scheduled personal time off from July 13, 2016 through August 11, 2016. Though manifestly *none of Mr. Jeffrey's business*, the purpose of said time off encompassed a trip to Israel to attend to family matters, and additional days within which complainants' counsel's office was closed for business. The fact that complainants' counsel undertook to conduct a deposition on an unrelated matter during said time off is not only manifestly none of Mr. Jeffrey's business and *of no consequence whatsoever* with respect to litigation of the instant case (and certainly irrelevant to Mr. Jeffrey's Exceptions) and again constitutes *no ground whatsoever* for the draconian relief absurdly sought by Mr. Jeffrey upon such ridiculous grounds as those set forth above, which are now paraded before the Commission solely to detract and distract from Mr. Jeffrey's own bad behavior, uncivil conduct, and gross violations of the RPP.

Needless to say, Mr. Jeffrey's didactic and unsupported allegations cannot possibly serve as any reasonable basis for the Commission to issue an Order to Show Cause as frivolously requested by respondents herein through their counsel, Mr. Jeffery.

Further, and to the extent that the "heavily doctored" versions of said documents were *created by respondents*, there is "no blame to shift" other than to let such blame repose where it fairly belongs, to wit: upon Jeffrey/Werner and their mutual client, Hitrinov.

Of considerable entertainment value, amidst the abhorrent invective spewed forth by Mr. Jeffrey, is the entirely laughable concept of non-party Kapustin making *any* statement "under oath"

which is, to say the least, legally and morally bankrupt, and is an understatement of galactic proportions by Mr. Jeffrey's concession of Kapustin as "...not an entirely reliable witness".

Consequently, there exists neither falsity nor fabrication with respect to the documents proffered by complainants, in that if there is *any* false or fabricated documents which have been produced in this case, they have been produced *solely and exclusively* by Jeffrey/Werner and their mutual client, Hitrinov.

It is respectfully submitted that despite considerable effort to "throw enough 'mud' on the wall" in desperate hopes that some of it will stick, such picayune and pissant hyperbole at once reveals the utter frivolity and sheer desperation of Mr. Jeffrey's instant motion, which gives new meaning to the axiom of *de minimus non curat lex*.

Most disingenuous, is Mr. Jeffrey's repeated portrayal of himself as the "keeper of the Rules", akin to Moses descending from Mount Sinai with the stone tablets, which is completely belied by Mr. Jeffrey's constant and repeated violations of the Rules which he so fervently defends, by taking uncountable "bites at the apple" in the form of innumerable so-called "Status Reports" as pretexts for further failed argument on motions previously made, and additional filings *all filed without leave of the Presiding Officer*, reducing Mr. Jeffrey to *no one* to lecture *anyone* on the Rules of the Commission.

While the undersigned is reluctant (even as Mr. Jeffrey is demonstrably *not*) and otherwise loathe to parade "dirty laundry" before the Commission more appropriate to a playground sandbox dispute as opposed to a supposed serious application to revoke an attorney's ability to practice law before the Commission, least the Commission require 'proof' in the form annexed by Mr. Jeffrey, included hereto as Appendix "7" is a series of emails containing the very vile, vituperative, and otherwise uncivil language which Mr. Jeffrey unabashedly decries while at the same moment,

engaging in same. Notable within the attached is the following: a) accusing the undersigned of engaging in “ethical lapses” warranting the attention of the Presiding Officer; b) characterizing the undersigned’s filings and submissions in this matter as “improvident grumbling”; c) telling the undersigned to “grow up” and “learn the rules”; d) wrongfully accusing the undersigned of “making motions by email”; e) telling the undersigned “you are free to lie as much as you like”; f) accusing the undersigned of being “...not just an incompetent lawyer but an inveterate liar” (which far and away exceeds any substantive criticism of Mr. Jeffrey’s junior associate, Ms. Vohra); g) accusing the undersigned of being “mentally disturbed”; and h) accusing the undersigned of not knowing how to read (i.e. “...if you knew how to read”). Apparently, Mr. Jeffrey is of the opinion that the foregoing falls within the “modicum of civility” that he propounds to uphold, the patent absurdity of which is blatantly exposed by his own insulting and uncivil communications set forth above, which are only the “tip of the iceberg” as to the plethora of insults, opprobrium, and ad hominem attacks against the undersigned, from the inception of this litigation, and continuing to the time of Mr. Jeffrey’s instant Exceptions. It is respectfully submitted that any decision from this Honorable Commission on Mr. Jeffrey’s requested relief should and must necessarily take into consideration Mr. Jeffrey’s own manifest bad behavior described above.

Mr. Jeffrey’s Baseless Accusations against Complainants’ Counsel

Respondents’ Accusations of Meritless Claims

Mr. Jeffrey has further purported to argue that the undersigned’s ability to practice before the Commission should be revoked upon ground of having made claims under the Shipping Act which Mr. Jeffery considers to be frivolous or otherwise false.

To the extent that this issue is presently the subject of a pending motion which is, as of the time of this writing, *sub judice* with the Presiding Officer, it is respectfully submitted that having

not yet received a decision thereon, Mr. Jeffrey's unproven and unfounded allegations and accusations thereon cannot possibly serve as any basis for any disciplinary action whatsoever against complainants' counsel, to the point of constituting and frivolous basis for Mr. Jeffrey's instant requested relief, itself deserving of appropriate disciplinary action.

Falsification of Documents

Mr. Jeffery has accused complainants' counsel of deliberately submitted falsified documents in this matter.

With respect to Mr. Jeffrey's bombastic pronouncement that complainants' counsel has allegedly "...rel[ie]d upon invoices they know to be falsified...", once again, complainants are *gobsmacked* by the indescribable irony of Jeffrey/Werner accusing *anyone* of relying on falsified documents, in light of Jeffrey/Werner's proffer of an affidavit purporting to be that of their mutual client, Hitrinov containing an obviously forged signature, a copy of which is annexed hereto as Appendix "8". Notably, the conclusions as to said signature being an obvious forgery are drawn by a forensics expert (see Appendix "9"), as opposed to the didactic pronouncements of an unbalanced attorney or his cohort. Also noteworthy, is the fact that upon having been exposed for submitting a fraudulent document containing an obviously forged signature of Hitrinov, Jeffrey/Werner attempted to remedy the situation by providing yet *another* document purporting to contain the signature of Hitrinov, which was not only undated, but misrepresented an alleged notarization thereof by an individual who failed to enter appropriate identification and certification data concerning said fraudulent notarization (see Appendix "10"). Conspicuously absent and inexplicably missing from Mr. Jeffrey's pronouncements is *any* affidavit from respondent, Hitrinov or any other representative of respondent Empire United Lines Co. Inc. ("EUL"), attesting as to which of the documents is the invoice "actually sent" to Kapustin. Needless to say, such

documents cannot be ‘self-verified’ through the attorney’s affirmation of appearing counsel, let alone representations of a non-appearing counsel, Werner. Accordingly, this would appear to be more of a case of *falsus in uno* rather than *res ipsa loquitur*.

Alternatively stated, there is indeed a second set of “heavily doctored” invoices at issue with respect to each of the four subject automobiles, however, that particular fraud, along with *all* other fraudulent conduct and behavior in this case, rests squarely with Jeffrey/Werner and their mutual client, Hitrinov.

Respondents have further based their instant ill-founded and frivolous motion upon alleged ‘evidence’ “...that at least some of the ‘shipping documents’ [sic] are nothing more than fraudulent fabrications” (emphasis added).

Respondents have additionally alleged “...that at least some of those documents are fraudulent” to the extent that Respondents ‘believe’ that certain documents were “doctored” by the use of a scanner “...to appear as an original”. Needless to say, Respondents have not submitted a shred of evidence to support their outrageous allegation other than their own misguided “belief”.

Notwithstanding Respondents’ extraneous reference to their separately filed Motion for Judgment on the Pleadings, inclusive of a self-serving Declaration by individually named Respondent, Mr. Hitrinov, *conspicuously absent* from Respondents’ motion papers is *any* Affidavit by either a forensics expert or other qualified individual to support the false and didactic pronouncements of Mr. Hitrinov and his counsel.

Complainants’ Counsel’s Outgoing Email Messages and Alleged Unavailability

The undersigned will not dignify by responding to Mr. Jeffrey’s outrageous suggestion that the undersigned’s ability to practice law before the Commission should be revoked upon grounds of Mr. Jeffrey’s apparent dissatisfaction with the form and content of the undersigned’s outgoing

email messages, other than to note acute embarrassment for Mr. Jeffery, for seriously propounding such an argument. Mr. Jeffrey's unfounded allegations are significant, however, for a) revealing his "kitchen sink" approach to furthering his personal vendetta against the undersigned and demonstrated disdain for the Presiding Officer; and b) evincing a consciousness of the utter frivolity of such unfounded accusations, seriously submitted as part of Mr. Jeffrey's so-called exceptions.

Production of Alleged "Confidential" Documents

The Commission is respectfully asked to note that the material that Kapustin seeks to strike and seal are a matter of public record, in that said documents were exchanged in unrelated matters under color of no Order or Stipulation of Confidentiality, and under no Order of Sealing. In that the documents that Kapustin now seeks to seal or strike have thus been communicated to third persons with no objection, it is respectfully submitted that Kapustin cannot now attempt to "put the genie back in the bottle" by improperly seeking the relief of a sealing of records publicly exchanged with third parties as described above.

Additionally, and apart from furthering his baselessly denied but blatantly apparent personal vendetta against complainants' counsel, whom Kapustin has described in his motion papers as "liar" and "mentally sick", Kapustin has abjectly failed to demonstrate any good cause whatsoever; particularly in that he has not, at the time of the filing of his motion, been granted leave to intervene, or set forth any prima facie case as to why his ill-founded and incoherent motion should be granted.

Authorship of Kapustin Affidavits

It is undisputed that non-party Kapustin neither speaks, reads, nor understands English.

While Kapustin purports to be in Russia at the time that said affidavits were created, in fact the envelopes containing same bore postmarks in the United States.

It is further undisputed that while Kapustin may have access to the Commission's electronic docket, to the extent that upon information and belief, said docket is updated on a *monthly* basis, Kapustin would have had no other timely access to the materials referenced in affidavits purportedly authored by him unless said subsequent filings were being "funneled" to Kapustin, most reasonably by those who are presently championing his cause, to wit: Jeffrey/Werner.

It is respectfully further submitted that even a cursory reading of the affidavits supposedly authored by Kapustin instantly makes clear those portions which were written by an attorney.

Indicative of the foregoing, the email annexed as Appendix "4" clearly reflects ongoing communications between Mr. Jeffrey's "coordinating counsel" Werner, and Kapustin, whose aid Werner openly solicited in a separate proceeding at a time when Werner was representing an adverse party against Kapustin.

While the undersigned will repose complete confidence in the Commission's ability to discern whether the subject affidavits were or not actually authored by Kapustin, clearly the evidence points toward involvement by attorneys in the United States, most reasonably, Jeffrey/Werner.

Consequently, it is respectfully submitted that it cannot reasonably be concluded that complainants' questioning of the veracity of the authorship of Kapustin's affidavits, utilized and relied upon by Mr. Jeffrey to his perceived advantage can serve as any basis for the granting of respondents' requested relief in the form of any disciplinary action whatsoever against complainants' counsel.

The Commission is additionally and respectfully asked to note that the Kapustin affidavits are not the only documents of questionable authenticity proffered and relied upon by Mr. Jeffrey in light of the affidavit of respondent Hitrinov which is the subject of a separate pending motion, based upon a forged signature as opined by a handwriting expert exchanged by complainants herein.

Complainants' Copying of Filings to Mr. Jeffrey's Managing Partner

As an Officer of the Court, and to the extent that it is complainants' belief that Mr. Jeffrey is unethically 'bilking' his client through the nonsense and rubbish that he has heaped upon this litigation through his incessant frivolous filings in this matter, now totaling over One-Hundred and Twenty (120) most of which, if not were caused or occasioned by Mr. Jeffrey, which did and do nothing to advance his clients' defenses; and to the extent that same would not appear to be in the best interests of his client; together with Mr. Jeffrey's ever-growing evidence of instability, the undersigned feels it is his continuing duty to apprise Mr. Lesk, as Managing Attorney of all past, present and future examples of such behavior and conduct.

It is respectfully submitted that Mr. Jeffrey's only basis for objecting to the foregoing is by reason of having been (justifiably) embarrassed before a Senior Partner of his firm by reason of his unacceptable bad behavior and conduct detailed throughout this brief. Certainly, and as is the case with each and every one of Mr. Jeffrey's purported "arguments", it is respectfully submitted that neither can the foregoing possibly serve as any basis for the imposing of any disciplinary action against complainants' counsel, much less revocation of the undersigned's ability to practice law before the Commission.

Mr. Jeffrey's Disdain and Contempt for the Presiding Officer's Decision

Throughout his Exceptions, Mr. Jeffrey has demonstrated utter disdain and contempt for the Presiding Officer and his resultant decision of September 16, 2016.

In a confused argument Mr. Jeffrey has alternately propounded that it was “a mistake” for the Presiding Officer to have ruled that it was beyond his jurisdiction to decide the issue of whether or not the parties’ counsels’ ability to practice law before the Commission should be revoked, or whether other disciplinary action should be imposed.

Despite twenty-seven (27) pages of lecturing on “the law according to Jeffrey”, inclusive of Mr. Jeffrey’s criticism and proposed “corrections” to the Rules as they presently exist, it still remains entirely unclear as to whether Mr. Jeffrey is a) asking the Commission to remand respondents’ instant requested relief back to Judge Guthridge who has already decided that he cannot rule on said requested relief for the reasons stated in his order of September 16, 2016, and as whether it is this specific ruling that Mr. Jeffrey takes exceptions to; b) whether Mr. Jeffrey is asking the Commission to make a *de novo* decision in the first instance; or c) some combination of the preceding.

To the extent that Mr. Jeffrey seeks to have the matter remanded back to Judge Guthridge, it is respectfully submitted that the foregoing may lend itself to the “law according to Jeffrey”, but runs contrary to the RPP as well as the Presiding Officer’s Order of September 16, 2016 which Mr. Jeffrey purports to now take Exceptions to.

To the extent that the Commission may elect to conclude that Mr. Jeffrey is instead asking for *de novo* relief in the first instance, it is respectfully submitted that based upon the foregoing, that Mr. Jeffrey has abjectly failed to establish neither any credible *prima facie* case or demonstration of any conduct or actions by complainants’ counsel warranting any form of

disciplinary action, let alone revocation of the ability to practice before the Commission; nor has Mr. Jeffrey set forth a single act, allegation, accusation, or violation of the RPP that he himself has not engaged in, with repeated impunity.

Thus, in an epic exercise of “the pot calling the kettle black” and in a continuing manifestation of “projection” and “transference” Mr. Jeffrey has catalogued a list of alleged transgressions that he himself has plied and engaged in with abandon. Consequently, if the acts and conduct of which Mr. Jeffrey so vehemently and viscerally complains of in his purported Exceptions are those which he has demonstrably and undisputedly personally engaged in himself as set forth above, then if any disciplinary action is to be taken, under the rubric of being hoisted by one’s own petard, such action must be taken against Mr. Jeffrey and his firm.

The Fallacy of the Fictitious Company, “Global Auto Enterprise”

As to Respondents’ reference to invoices from one “Global Auto Enterprise”, it is noted at the outset that *no such entity exists* other than in the frivolous arguments and false representations of Mr. Hitrinov and his counsel. Indeed, and as Respondents are well aware, the actual entity listed as seller of the subject vehicles in numerous documents is “Global Auto Inc.” (“Global”). Conspicuously and conveniently *absent* from Respondents’ instant frivolous motion is *any* Affidavit or declaration by the Principal of Global and creator of the invoices, Kapustin. Needless to say, Complainants are unable to opine (as neither are Respondents-movants) as to *how* or *why* Kapustin may have included certain language in some invoices, but not in others. While such inquiry *may* arguably be the subject of a deposition of Kapustin, needless to say the foregoing *cannot* reasonably be construed to constitute “manipulated documents” or “obvious or apparent fakes” as recklessly and baselessly propounded by Respondents in their instant frivolous motion,

unless said documents are manipulated and/or faked by the proven liar, fraud cheat, and “master criminal”, Kapustin.

CONCLUSION

As set forth above, as well as in numerous filings docketed with the Commission, and letters filed both with the Presiding Officer and the Office of the Secretary of the Commission, from the inception of this litigation Mr. Jeffery has conducted himself in a manner which can only be described as rude, unprofessional, obnoxious and uncivil.

Mr. Jeffery has further bombarded and bludgeoned both the Presiding officer and complainants counsel with countless submissions, filings, emails, and correspondence unprecedented in their weight and number in a matter which has not yet even proceeded to depositions.

Mr. Jeffrey’s obvious and tactical contrivance for doing so, is not only to bill his client at each and every available opportunity, but rather is calculated to vex, annoy, harass, and intimidate complainants and their counsel herein (of which Mr. Jeffrey’s latest attempt is only his most recent effort); and to distract the Presiding Officer and now the Commission from ruling on other motions presently pending including but not limited to respondents Motion for Judgment on the Pleadings herein.

Owing to a pronounced inability to in any way defend against complainants’ instant claims ‘on the merits’ thereof, Mr. Jeffery has resorted to one tactical contrivance after another to at any and all costs extricate his client from this lawsuit absent discovery, litigation and an ensuing judgment on the merits.

Mr. Jeffrey first attempted, through fraudulent affidavits purporting to have been written by non-party, Kapustin but upon information and belief authored by Mr. Jeffrey and his minion,

Werner to “disqualify” the undersigned based upon an alleged conflict of interest. Though presently still *sub judice*, suffice it to say said motion is completely without merit, and has been propounded by an individual completely without morals in the form of non-party, Kapustin, albeit that Kapustin has been openly “championed” by Jeffrey/Werner.

Mr. Jeffery then attempted to have the undersigned’s ability to practice before the Commission revoked in his ill-founded motion made to the Presiding Officer, who declined to rule on same for the reasons stated in Judge Guthridge’s Order of September 16, 2016.

Mr. Jeffery has now taken the extraordinary step of, within the guise of purported “Exceptions” to Judge Guthridge’s decision, asked the Commission to, in effect, issue a *de novo* ruling upon issues that Judge Guthridge as Presiding officer, has “passed” on.

It is respectfully submitted that in considering the alleged bases for Mr. Jeffery’s instant requested relief, inclusive of open criticism of a junior associate who has demonstrated her incompetence with regard to misfiling and misidentifying various submissions in this matter; allegations and accusations regarding the undersigned’s form and method of telephonic voicemail, emails forwarding messages, and how the undersigned occupies time away from the office, it is further respectfully submitted that the foregoing not only abundantly reveals the utter frivolity of Mr. Jeffery’s instant requested relief, as well as the true tactical basis for the interposing of same, but worse denigrates the sanctity and the dignity of the Commission itself, as well as the rules by which all attorneys are held accountable, including Mr. Jeffery.

For all these reasons, together with that which is set forth above, as well as in complainants’ original response to Mr. Jeffery’s ill-founded requested relief the first time it was made, complainants respectfully request that the Commission accept and uphold the Presiding Officer’s decision to deny jurisdiction over this issue and decline to do that which the Presiding Officer

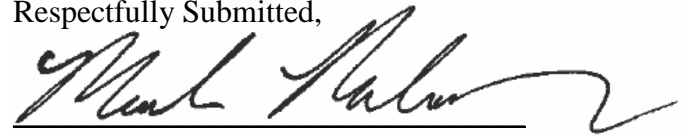
declined to do, by denying respondents' request for an Order to Show Cause as to why complainants should not be subjected to disciplinary action in its entirety, *with prejudice*.

In closing, it is indeed true that "one bad apple can spoil the barrel" – especially when that apple is rotten to the core.

WHEREFORE, and based upon the foregoing, it is respectfully submitted that the Commission should now deny the frivolous, baseless, retributive, and punitive requested relief of respondents by Mr. Jeffrey in its entirety, with prejudice, by (1) declining to remand this matter back to the Presiding Officer, or to have the Presiding Officer "review" same; (2) declining to conduct a de novo review of the Presiding Officer's decision; and (3) declining to issue an Order to Show Cause as requested, inclusive of denying the relief requested therein, together with such other and further relief as the Commission may deem just and proper under the circumstances.

Dated: October 20, 2016
Brooklyn, New York

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "Marcus A. Nussbaum", written over a horizontal line.

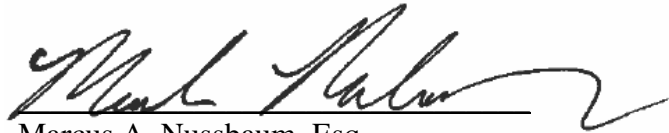
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the **COMPLAINANTS' RESPONSE TO EXCEPTIONS OF RESPONDENTS' COUNSEL TO THE PRESIDING OFFICER'S SEPTEMBER 16 DECISION NOT TO CONSIDER DISCIPLINARY ACTION AGAINST COMPLAINANTS' COUNSEL** and **APPENDIX** upon Respondents' Counsel at the following address:

Nixon Peabody LLP
Attn: Eric C. Jeffrey, Esq.
799 9th Street NW, Suite 500
Washington, DC 20001-4501

by first class mail, postage prepaid, and by email (ejeffrey@nixonpeabody.com).

A handwritten signature in black ink, appearing to read 'Marcus A. Nussbaum', is written over a horizontal line.

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Dated: October 20, 2016 in Brooklyn, New York.